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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/603,759
Filing Date: June 25, 2003
Appellant(s): ROSENBAUER ET AL.

MAILED
OCT 18 2007
GROUP 3600

Mr. Russell W. Warnock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 10, 2007 appealing from the Office action mailed November 16, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct, and the final rejection of claim 26 is not being appealed.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct (the final rejection of claim 26 is not being appealed.) The changes are as follows:

a. Whether claims 10-13, 18, 20-21, 23, and 25 are unpatentable under 35

U.S.C. § 102(b) as being anticipated by EP Patent No. 556787 to Premoli et al?

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 556,787	Premoli et al	08-1993
5,368,379	Wrangberth	11-1994
3,658,075	Jacobs	04-1972

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 10-13, 18, 20-21, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Europe 556,787 to Premoli et al.

Premoli et al discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 7-9, a container body having a plurality of assembled parts, a base frame 1', at least one cover part 22' attached to the base frame part 1', said cover part including a plurality of side parts 23',44, said side parts connected to one another at an angle to form a substantially U-shaped cover part 22' having an open end, the base frame part having a floor part, an upstanding side part 28, corner stays 2a-b, said upstanding side part located in said U-shaped cover part open end completing said cover part, said base frame part 1' and said upstanding side part 28 formed as a unitary assembly, said cover part formed from a corrosion-resistant material, said base frame part including a filter floor part 4(col. 3, lines 53-58); wherein the cover part is attached externally to said at least two upstanding corner stays of the base frame, and formed substantially in the shape of a peripherally closed rectangle.

(B) Claims 10-11, 18, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,368,379 to Wrangberth.

Wrangberth discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 1-2, a container body including a plurality of assembled parts; a base frame part 10, said base frame part having a floor part 19 and at least two upstanding corner stays 26; and at least one cover part 11 attached to said base frame part, said cover part 11 including a plurality of side parts, said side parts connected to one another at an angle to form a substantially U-shaped periphery of said cover part, said substantially U-shaped periphery of said cover part having an open end and a closed end opposite said open end, and said cover part being attached to said base frame part with its U-shaped periphery mounted on said floor part 19 of said base frame part, such as shown in Fig 2, and said cover part 11 being attached at a respective one of its open end and its closed end to said at least two upstanding corner stays; wherein said cover part 11 is attached internally, Fig 2, to said at least two upstanding corner stays of said base frame part, and formed substantially in the shape of a peripherally closed rectangle.

(C) Claims 14, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al.

Premoli et al discloses all the elements as discussed above except for (1) claim 14, said base frame part and said upstanding side part unitary assembly formed from a molded plastic material, (2) claim 16, the "peripherally closed rectangle cover part is

formed from two substantially L-shaped side parts", (3) claims 17 and 24, the upstanding side part including "additional retention functional elements, including at least one receptacle retention element.

In regard to claim 14 of the base frame part and the upstanding side part formed from a molded plastic material, since molded plastic material is a well known and commercially available product, and it is well known in the art to make parts of a dish-washing machine out of various materials including molded plastic. Therefore, it would have been obvious and well within the level of one skill in the art to modify the base frame part and the upstanding side part of Premoli et al by making them out of an alternate material, i.e., molded plastic material, depending on the desired need of the person constructing the parts, such as economic considerations, personal references, material readily available, etc.

In regard to the limitation in claim 16, Premoli et al discloses the claimed invention except for the cover part being formed from two substantially L-shaped side parts, instead of one U-shaped side part. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover part being formed from two substantially L-shaped side parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

In regard to the limitation in claim 17, although Premoli et al does not clearly teach the limitation recited therein of the upstanding side part 28 having at least one receptacle retention element, it would have been obvious and well known in the art to

provide the upstanding side part 28 of Premoli et al with at least one receptacle retention element for holding cleaning agent.

(D) Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al in view of USP 3,658,075 to Jacobs.

Premoli et al discloses all the elements as discussed above except for at least one of said side parts having a heat exchanger integrated therein.

Jacobs teaches the idea of providing a heat exchanger 60 integrated within a dishwashing machine container for the purpose of improving condensation means. Therefore, it would have been obvious to modify the structure of Premoli et al by providing at least one of said side parts with a heat exchanger integrated therein for the purpose of improving condensation means, as taught by Jacobs, since both teach alternate conventional dishwasher structure, used for the same intended purpose, thereby providing structure as claimed.

(10) Response to Argument

In response to Appellant's argument on page 9 of the above-noted Brief that "[T]he structure disclosed in Premoli '787 that is relied on in the Office Action as a disclosure of a washing container for a dishwashing machine is actually a cabinet.", and not a "washing container of the type described in the present application relating to a fully plastic container", the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to distinguish from the "washing container" structures of Premoli. Further, although the

claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

In response to Appellant's argument on pages 9-10 of the above-noted Brief that the corner stays refer to by the examiner are not corner elements or corner stays as described in the present application, again, the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to distinguish from the "corner stays" structures of Premoli. Further, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

In response to Appellant's argument on page 10 of the above-noted Brief that the structure having reference numeral 28 in Figure 5 being referred to by the examiner as "an upstanding side part located in the U-shape cover part open end completing the cover part with the base frame part 1 and the upstanding side part 28 formed as a unitary assembly" is actually a door, and "cannot be formed as a unitary assembly with the cover part because the door must move inwardly and outwardly from the open end", the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to distinguish from the "upstanding side part 28" structure of Premoli. It is clear from the disclosure of Premoli that element 28 is connected to the base frame 1' and located in the U-shape cover part 22' open end to complete the cover part; therefore, the base frame 1' and the upstanding side part 28 are clearly formed as a unitary assembly. Further, although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims.

In response to Appellant's argument on page 11 that Premoli fails to teach the limitation in claim 10 of "a cover part attached to the base frame part, wherein the cover part includes a plurality of side parts and the side parts are connected to one another at an angle to form the cover part", the examiner respectfully takes the position that Premoli clearly shows (1) in Figure 8 that member 23' of the cover part 22' attached to the base frame part 1', and (2) in Figure 9 that the cover part 22' including a plurality of side parts 23', 44 connected to one another at an angle to form the cover part 22'. Further, the claimed language fails to clearly define how the side parts are "connected" to one another in order to distinguish from the prior art of record, e.g., mechanical means, thermo means, or chemical means.

In response to Appellant's argument on pages 12-13 that "the side rails to the Wrangberth '379 chassis fail to function as the upstanding corner stays of the present invention" and "the present corner stays are designed to reach upwardly substantially the height of the U-shaped wall members of the present invention to provide structural support therefore", the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to distinguish from the "corner stays" structures of Wrangberth, and that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

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In response to Appellant's argument on page 13 that Wrangberth fails to disclose a U-shape periphery, the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to distinguish from Wrangberth.

In response to Appellant's argument on page 14 that Premoli fails to disclose any molded plastic material and fails to render the present invention obvious, the examiner respectfully takes the position that (1) plastic material is a well known and commercially available product and (2) it is well known in the art to form parts of a dishwashing machine from various materials including molded plastic; therefore, it would have been obvious and well within the level of one skill in the art to modify the base frame part and the upstanding side part of Premoli by making them out of an alternate material, i.e., molded plastic material, depending upon the desired need of the person constructing the parts, such as economic considerations, personal references, or material readily available.

In response to Appellant's argument on page 14 regarding the limitation in claim 16 of the U-shaped cover part being formed from two substantially L-shaped side parts, the examiner respectfully takes the position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover part being formed from two substantially L-shaped side parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

In response to Appellant's argument on pages 14-15 regarding the limitation in claim 17 of the upstanding side part having at least one receptacle retention element, the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claim in describing the "element" in order to distinguish from the prior art of record. The examiner agrees with the Appellant that Premoli fails to teach or disclose the upstanding side part/door 28 having a receptacle retention element; however, it is well known in the dishwashing machine art to provide the door of a dishwashing machine with a receptacle for holding cleaning agent and there must be at least one receptacle retention element in order to hold the receptacle in place, thus Premoli, as modified, meets the claimed limitation in claim 17.

In response to Appellant's argument on page 16 that "the present invention includes retention elements which may hold a heat exchanger which is a discrete element and not integrated as asserted by the Examiner and as disclosed in Jacobs '075", the examiner respectfully takes the position that claim 19 clearly recited "at least one of said side parts including a heat exchanger integrated therein". There is nothing in the claimed language of "retention elements which may hold a heat exchanger" and the heat exchanger being a discrete element as alleged by Appellant. Please note that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Lanna Mai



Conferees:

Hanh V. Tran 

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Lanna Mai 